

EXHIBIT C

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2023 AUG 04 02:44 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 22-2-11294-8 KNT

HONORABLE JIM ROGERS
HEARING: AUGUST 17, 2023
WITHOUT ORAL ARGUMENT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

TATYANA LYSYY, married, VASILY
LYSYY, married who are each members of a
marital community,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AND DEUTSCHE BANK
NATIONAL TRUST COMPANY trustee, a
foreign corporation, IMPAC SECURED
ASSETS CORP 2005-62, MORTGAGE
PASSTHROUGH CERTIFICATES SERIES
2007-1, a foreign corporation; QUALITY
LOAN SERVICE OF WASHINGTON; PMC
BANCORP, a foreign corporation and national
association; BANK OF AMERICA, NA.
Successor by Merger to BAC Home Loans
Servicing, LP fka Countrywide Home Loans
Servicing LP ("Bank of America") a national
association and foreign corporation;
MERSCORP Holdings, Inc., a foreign
corporation; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a foreign
corporation; SELECT PORTFOLIO
SERVICING, INC., a foreign corporation;
SAFEGUARD PROPERTIES, LLC, a foreign
corporation; E*TRADE, a foreign corporation.
Does 1-20

Defendants.

Case No. 22-2-11294-8 KNT

DEFENDANTS' MOTION TO COMPEL

DEFENDANTS' MOTION TO COMPEL - 1

BUCHALTER
1420 FIFTH AVENUE, SUITE 3100
SEATTLE, WA 98101-1337
TELEPHONE: 206.319.7052

I. RELIEF REQUESTED

Defendants, Deutsche Bank National Trust Company, as trustee, on behalf of the holders of the Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-1 (the “Trust”), Select Portfolio Servicing, Inc. (“SPS”), Mortgage Electronic Registration Systems, Inc. (“MERS”), Safeguard Properties, LLC (“Safeguard”) and Residential RealEstate, Inc. (“RR”) (collectively “Defendants”), respectfully request that the Court compel Plaintiffs’ discovery responses to written discovery served by the Trust, SPS and MERS on January 17, 2023, and served by Safeguard on March 21, 2023. To date, over five months later, Defendants have received only some unidentified documents and no written discovery responses. Plaintiffs’ discovery responses and complete document production are long overdue. A court order is appropriate.

II. STATEMENT OF FACTS

A. Background

Plaintiffs initially filed this action on July 20, 2022 without counsel and to quiet title to the property at 12921 SE 318th Way, Auburn, Washington 98092 (the “Property”). *Sagara Dec.*, ¶3, Ex. A. Plaintiffs named multiple Defendants, including the moving Defendants to this Motion to Compel. *Id.* On July 29, 2022, Plaintiffs added two Defendants, including RR. *Id.*, ¶4, Ex. B. Plaintiffs allege that Defendants conspired to effectively evict them from the Property. Plaintiffs’ claims include civil conspiracy, intentional trespass, negligent trespass, declaratory relief, theft/conversion, invasion of private affairs, violation of Washington’s Deeds of Trust act (“DTA”), violation of Washington’s Consumer Protection Act (“CPA”), violation of the Fair Debt Collection Practices Act (“FDCPA”), violation of Washington’s Foreclosure Fairness Act (“FFA”), wrongful foreclosure and outrage. Defendants deny Plaintiff’s allegations/claims. *Id.*

B. To Date, Defendants Have Received Incomplete Documents and No Discovery Responses.

On January 17, 2023, Defendants the Trust, SPS and MERS served their first written discovery to Plaintiffs. *Id.*, ¶5, Ex. C. This discovery sought basic information and documents

related to Plaintiffs' various claims. *Id.* To date, Defendants have received some documents and no discovery responses. *Id.*, ¶6.

On March 21, 2023, Defendant Safeguard served its first written discovery to Plaintiffs. *Id.*, ¶7, Ex. D. Safeguard's written discovery also sought basic information and documents related to the claims against Safeguard. *Id.* To date, Defendants have received some documents and no discovery responses. *Id.*, ¶8.

C. Plaintiffs' Counsel Has Failed to Make Himself Available for a CR 26(i) Conference.

Once Plaintiffs' counsel appeared on March 6, 2023, defense counsel attempted to work with Plaintiffs' counsel to obtain Plaintiffs' complete discovery responses. On June 16, 2023 and June 22, 2023, defense counsel attempted to confer pursuant to CR 26(i). *Id.*, ¶¶9, 10, Exs. E, F. However, Plaintiffs' counsel would not make himself available. *Id.*

III. STATEMENT OF ISSUES

Whether the Court should compel Plaintiffs' discovery responses.

IV. EVIDENCE RELIED UPON

- A. Declaration of Midori R. Sagara; and
- B. The pleadings and records filed in this action.

V. ARGUMENT

The Civil Rules "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." CR 1; *Amy v. Kmart of Washington LLC*, 153 Wn. App. 846, 223 P.3d 1247 (2009). CR 37 provides that a party may move to compel discovery responses, including incomplete responses. CR 37. While a discovery conference is preferred, "CR 26(i) should not be read as prohibiting a trial court from exercising its discretion to waive a conference and certification if, under the particular circumstances, that will fairly and sensibly streamline the progress of the case." *Amy*, Wn. App. at 853.

In the present case, Plaintiffs were served written discovery on January 17, 2023 and March 21, 2023. *Sagara Dec.*, ¶¶5, 7, Exs. C, D. To date, over five months later, Defendants have received

no written discovery responses and only some unidentified documents. *Id.*, ¶¶6, 8. Without the written responses and objections, Defendants do not know which documents pertain to which interrogatory or request for production. Defendants also do not know if Plaintiffs have no documents that pertain to certain interrogatories or requests.

Defense counsel has attempted to confer pursuant to CR 26(i) twice with Plaintiffs' counsel, who appeared for Plaintiffs on March 6, 2023. On June 16, 2023 and June 22, 2023, defense counsel attempted to speak with Plaintiffs' counsel. *Id.*, ¶¶9, 10, Exs. E, F. However, Plaintiffs' counsel did not make himself available. Plaintiffs' counsel has made no effort to reschedule the discovery conference. *Id.* At this point, a court order compelling the discovery conference is necessary. Defendants require the discovery responses so they can schedule Plaintiffs' depositions.

VI. CONCLUSION

Given the above, the Court should compel Plaintiffs to provide their complete discovery responses and document production by August 25, 2023. The Court should also award Defendants their reasonable fees related to this Motion to Compel.

DATED this 4th day of August, 2023.

BUCHALTER

By: /s/ Midori R. Sagara

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National Trust Company, as trustee, on behalf
of the holders of the Impac Secured Assets
Corp. Mortgage Pass-Through Certificates
Series 2007-1, Select Portfolio Servicing, Inc.,
Mortgage Electronic Registration Systems,
Inc., Safeguard Properties, LLC, and
Residential RealEstate Review, Inc.*

DEFENDANTS' MOTION TO COMPEL - 4

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2023, I caused to be served a copy of the foregoing on the following persons in the manner indicated below at the following address:

Plaintiffs

Richard L. Pope, Jr.
Lake Hills Legal Services PC
15600 NE 8th Street, Suite B1-358
Bellevue, Washington 98008

☒ E-Service
☐ Hand Delivery
☐ Legal Messenger
☒ E-mail

By: s/ Elena Ortiz
Elena Ortiz, Legal Assistant
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LYSYY ET ANO

vs.

DEUTSCH BANK NATIONAL TRUST CO AND
DEUTSCHE BANK NATIONAL TRUST CO ET AL

NO. 22-2-11294-8 KNT

NOTICE OF HEARING RE MOTION TO COMPEL

KENT REGIONAL JUSTICE CENTER ONLY

(Clerk's Action Required) (NTHG)

TO: **THE CLERK OF THE COURT** and to all other parties listed on Page 2:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: AUGUST 17, 2023 Day of Week: THURSDAY

Nature of Motion: Defendants' Motion to Compel

CASES ASSIGNED TO INDIVIDUAL JUDGES -- RJC

If oral argument on the motion is allowed (LCR 7(b)(2)), contact staff of assigned judge to schedule date and time before filing this notice. **Working Papers:** The judge's name, date and time of hearing must be noted in the upper right corner of the Judge's copy. **Deliver Judge's copies to Judges' Mailroom at RJC.**

X Without oral argument (Mon - Fri)

Date: AUGUST 17, 2023 Time:

Judge's Name: Honorable Jim Rogers Trial Date: 1/16/2024

CHIEF CIVIL DEPARTMENT -- RJC

All Chief Civil calendars are at 10:00 a.m. on Fridays, except as noted. See signs posted at RJC for calendar location. Deliver working copies to Judges' Mailroom, Room 2D. *In upper right corner of papers write "Chief Civil Department" and date of hearing.*

- ☐ Extraordinary Writs (Show Cause Hearing) (LCR 98.40)
- ☐ Supplemental Proceedings/Judicial Subpoenas (LCR 69) 9:15 a.m.
- ☐ Motions to Consolidate with multiple judges assigned (LCR 40(a)(4)) (without oral argument) M-F.

☐ Structured Settlements (LCR 40(2)(S)) 9:00 pm, Friday

NON-ASSIGNED CASES

☐ Dispositive Motions 10:30 a.m.

☐ Non-Dispositive Motions (without oral argument)

☐ Motions and Revisions (LCR 7(b)(8))

☐ Certificates of Rehabilitation - Weapon Possession (Convictions from Limited Jurisdiction Courts) (LR 40(a)(2)(B))

PARTIES: The address of the Regional Justice Center is 401 4th Avenue North, Kent, WA 98032. You must bring this document and appear as scheduled.

☐ Room: _____

☐ See Posted Signs

You may list an address that is not your residential address where you agree to accept legal documents.

Name / Electronic Signature: s/ Midori R. Sagara Date: August 4, 2023

WSBA # 39626 (if attorney) Attorney for: Defendants

Address: 1420 Fifth Avenue, Suite 3100 City, State, Zip: Seattle

Phone: 2063197052 eMail: msagara@buchalter.com

LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE

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